

tion Institute that are prepared in partnership with the Consortium for Energy Efficiency, and

(ii) in the case of geothermal heat pumps—

(I) shall be based on testing under the conditions of ARI/ISO Standard 13256-1 for Water Source Heat Pumps or ARI 870 for Direct Expansion GeoExchange Heat Pumps (DX), as appropriate, and

(II) shall include evidence that water heating services have been provided through a desuperheater or integrated water heating system connected to the storage water heater tank.

### (3) Energy-efficient building property

The term “energy-efficient building property” means—

(A) an electric heat pump water heater which yields an energy factor of at least 2.0 in the standard Department of Energy test procedure,

(B) an electric heat pump which has a heating seasonal performance factor (HSPF) of at least 9, a seasonal energy efficiency ratio (SEER) of at least 15, and an energy efficiency ratio (EER) of at least 13,

(C) a geothermal heat pump which—

(i) in the case of a closed loop product, has an energy efficiency ratio (EER) of at least 14.1 and a heating coefficient of performance (COP) of at least 3.3,

(ii) in the case of an open loop product, has an energy efficiency ratio (EER) of at least 16.2 and a heating coefficient of performance (COP) of at least 3.6, and

(iii) in the case of a direct expansion (DX) product, has an energy efficiency ratio (EER) of at least 15 and a heating coefficient of performance (COP) of at least 3.5,

(D) a central air conditioner which achieves the highest efficiency tier established by the Consortium for Energy Efficiency, as in effect on January 1, 2006, and

(E) a natural gas, propane, or oil water heater which has an energy factor of at least 0.80.

### (4) Qualified natural gas, propane, or oil furnace or hot water boiler

The term “qualified natural gas, propane, or oil furnace or hot water boiler” means a natural gas, propane, or oil furnace or hot water boiler which achieves an annual fuel utilization efficiency rate of not less than 95.

### (5) Advanced main air circulating fan

The term “advanced main air circulating fan” means a fan used in a natural gas, propane, or oil furnace and which has an annual electricity use of no more than 2 percent of the total annual energy use of the furnace (as determined in the standard Department of Energy test procedures).

### (e) Special rules

For purposes of this section—

#### (1) Application of rules

Rules similar to the rules under paragraphs (4), (5), (6), (7), (8), and (9) of section 25D(e) shall apply.

### (2) Joint ownership of energy items

#### (A) In general

Any expenditure otherwise qualifying as an expenditure under this section shall not be treated as failing to so qualify merely because such expenditure was made with respect to two or more dwelling units.

#### (B) Limits applied separately

In the case of any expenditure described in subparagraph (A), the amount of the credit allowable under subsection (a) shall (subject to paragraph (1)) be computed separately with respect to the amount of the expenditure made for each dwelling unit.

### (f) Basis adjustments

For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

### (g) Termination

This section shall not apply with respect to any property placed in service after December 31, 2007.

(Added Pub. L. 109-58, title XIII, §1333(a), Aug. 8, 2005, 119 Stat. 1026; amended Pub. L. 109-135, title IV, §412(b), Dec. 21, 2005, 119 Stat. 2636; Pub. L. 110-172, §11(a)(2), Dec. 29, 2007, 121 Stat. 2484.)

#### REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (c)(1), is the date of enactment of Pub. L. 109-58, which was approved Aug. 8, 2005.

#### AMENDMENTS

2007—Subsec. (c)(3). Pub. L. 110-172 substituted “part 3280” for “section 3280”.

2005—Subsec. (b)(2). Pub. L. 109-135 substituted “subsection (c)(2)(B)” for “subsection (c)(3)(B)”.

#### EFFECTIVE DATE

Pub. L. 109-58, title XIII, §1333(c), Aug. 8, 2005, 119 Stat. 1030, provided that: “The amendments made by this section [enacting this section and amending section 1016 of this title] shall apply to property placed in service after December 31, 2005.”

### § 25D. Residential energy efficient property

#### (a) Allowance of credit

In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

(1) 30 percent of the qualified solar electric property expenditures made by the taxpayer during such year,

(2) 30 percent of the qualified solar water heating property expenditures made by the taxpayer during such year, and

(3) 30 percent of the qualified fuel cell property expenditures made by the taxpayer during such year.

#### (b) Limitations

##### (1) Maximum credit

The credit allowed under subsection (a) (determined without regard to subsection (c)) for any taxable year shall not exceed—

(A) \$2,000 with respect to any qualified solar electric property expenditures,

(B) \$2,000 with respect to any qualified solar water heating property expenditures, and

(C) \$500 with respect to each half kilowatt of capacity of qualified fuel cell property (as defined in section 48(c)(1)) for which qualified fuel cell property expenditures are made.

**(2) Certification of solar water heating property**

No credit shall be allowed under this section for an item of property described in subsection (d)(1) unless such property is certified for performance by the non-profit Solar Rating Certification Corporation or a comparable entity endorsed by the government of the State in which such property is installed.

**(c) Carryforward of unused credit**

**(1) Rule for years in which all personal credits allowed against regular and alternative minimum tax**

In the case of a taxable year to which section 26(a)(2) applies, if the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a)(2) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

**(2) Rule for other years**

In the case of a taxable year to which section 26(a)(2) does not apply, if the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a)(1) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section and sections 23, 24, and 25B), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

**(d) Definitions**

For purposes of this section—

**(1) Qualified solar water heating property expenditure**

The term “qualified solar water heating property expenditure” means an expenditure for property to heat water for use in a dwelling unit located in the United States and used as a residence by the taxpayer if at least half of the energy used by such property for such purpose is derived from the sun.

**(2) Qualified solar electric property expenditure**

The term “qualified solar electric property expenditure” means an expenditure for property which uses solar energy to generate electricity for use in a dwelling unit located in the United States and used as a residence by the taxpayer.

**(3) Qualified fuel cell property expenditure**

The term “qualified fuel cell property expenditure” means an expenditure for qualified

fuel cell property (as defined in section 48(c)(1)) installed on or in connection with a dwelling unit located in the United States and used as a principal residence (within the meaning of section 121) by the taxpayer.

**(e) Special rules**

For purposes of this section—

**(1) Labor costs**

Expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the property described in subsection (d) and for piping or wiring to interconnect such property to the dwelling unit shall be taken into account for purposes of this section.

**(2) Solar panels**

No expenditure relating to a solar panel or other property installed as a roof (or portion thereof) shall fail to be treated as property described in paragraph (1) or (2) of subsection (d) solely because it constitutes a structural component of the structure on which it is installed.

**(3) Swimming pools, etc., used as storage medium**

Expenditures which are properly allocable to a swimming pool, hot tub, or any other energy storage medium which has a function other than the function of such storage shall not be taken into account for purposes of this section.

**(4) Dollar amounts in case of joint occupancy**

In the case of any dwelling unit which is jointly occupied and used during any calendar year as a residence by two or more individuals the following rules shall apply:

(A) MAXIMUM EXPENDITURES.—The maximum amount of expenditures which may be taken into account under subsection (a) by all such individuals with respect to such dwelling unit during such calendar year shall be—

(i) \$6,667 in the case of any qualified solar electric property expenditures,

(ii) \$6,667 in the case of any qualified solar water heating property expenditures, and

(iii) \$1,667 in the case of each half kilowatt of capacity of qualified fuel cell property (as defined in section 48(c)(1)) for which qualified fuel cell property expenditures are made.

(B) ALLOCATION OF EXPENDITURES.—The expenditures allocated to any individual for the taxable year in which such calendar year ends shall be an amount equal to the lesser of—

(i) the amount of expenditures made by such individual with respect to such dwelling during such calendar year, or

(ii) the maximum amount of such expenditures set forth in subparagraph (A) multiplied by a fraction—

(I) the numerator of which is the amount of such expenditures with respect to such dwelling made by such individual during such calendar year, and

(II) the denominator of which is the total expenditures made by all such individuals with respect to such dwelling during such calendar year.

(C) Subparagraphs (A) and (B) shall be applied separately with respect to expenditures described in paragraphs (1), (2), and (3) of subsection (d).

**(5) Tenant-stockholder in cooperative housing corporation**

In the case of an individual who is a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such individual shall be treated as having made his tenant-stockholder's proportionate share (as defined in section 216(b)(3)) of any expenditures of such corporation.

**(6) Condominiums**

**(A) In general**

In the case of an individual who is a member of a condominium management association with respect to a condominium which the individual owns, such individual shall be treated as having made the individual's proportionate share of any expenditures of such association.

**(B) Condominium management association**

For purposes of this paragraph, the term "condominium management association" means an organization which meets the requirements of paragraph (1) of section 528(c) (other than subparagraph (E) thereof) with respect to a condominium project substantially all of the units of which are used as residences.

**(7) Allocation in certain cases**

If less than 80 percent of the use of an item is for nonbusiness purposes, only that portion of the expenditures for such item which is properly allocable to use for nonbusiness purposes shall be taken into account.

**(8) When expenditure made; amount of expenditure**

**(A) In general**

Except as provided in subparagraph (B), an expenditure with respect to an item shall be treated as made when the original installation of the item is completed.

**(B) Expenditures part of building construction**

In the case of an expenditure in connection with the construction or reconstruction of a structure, such expenditure shall be treated as made when the original use of the constructed or reconstructed structure by the taxpayer begins.

**(9) Property financed by subsidized energy financing**

For purposes of determining the amount of expenditures made by any individual with respect to any dwelling unit, there shall not be taken into account expenditures which are made from subsidized energy financing (as defined in section 48(a)(4)(C)).

**(f) Basis adjustments**

For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

**(g) Termination**

The credit allowed under this section shall not apply to property placed in service after December 31, 2008.

(Added Pub. L. 109-58, title XIII, §1335(a), Aug. 8, 2005, 119 Stat. 1033; amended Pub. L. 109-135, title IV, §402(i)(1), (2), (3)(E), Dec. 21, 2005, 119 Stat. 2612, 2614; Pub. L. 109-432, div. A, title II, §206, Dec. 20, 2006, 120 Stat. 2945.)

AMENDMENT OF SECTION

*For termination of amendment by section 402(i)(3)(H) of Pub. L. 109-135, see Effective and Termination Dates of 2005 Amendment note below.*

AMENDMENTS

2006—Subsecs. (a)(1), (b)(1)(A). Pub. L. 109-432, §206(b)(1), substituted "solar electric property expenditures" for "photovoltaic property expenditures".

Subsec. (d)(2). Pub. L. 109-432, §206(b)(2), substituted "solar electric property expenditure" for "photovoltaic property expenditure" in heading and text.

Subsec. (e)(4)(A)(i). Pub. L. 109-432, §206(b)(1), substituted "solar electric property expenditures" for "photovoltaic property expenditures".

Subsec. (g). Pub. L. 109-432, §206(a), substituted "2008" for "2007".

2005—Subsec. (b)(1). Pub. L. 109-135, §402(i)(1), inserted "(determined without regard to subsection (c))" after "subsection (a)" in introductory provisions.

Subsec. (c). Pub. L. 109-135, §402(i)(3)(E), (H), temporarily reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year." See Effective and Termination Dates of 2005 Amendment note below.

Subsec. (e)(4)(A), (B). Pub. L. 109-135, §402(i)(2), amended subpars. (A) and (B) generally. Prior to amendment, subpars. (A) and (B) read as follows:

"(A) The amount of the credit allowable, under subsection (a) by reason of expenditures (as the case may be) made during such calendar year by any of such individuals with respect to such dwelling unit shall be determined by treating all of such individuals as 1 taxpayer whose taxable year is such calendar year.

"(B) There shall be allowable, with respect to such expenditures to each of such individuals, a credit under subsection (a) for the taxable year in which such calendar year ends in an amount which bears the same ratio to the amount determined under subparagraph (A) as the amount of such expenditures made by such individual during such calendar year bears to the aggregate of such expenditures made by all of such individuals during such calendar year."

EFFECTIVE AND TERMINATION DATES OF 2005  
AMENDMENT

Amendment by section 402(i)(3)(E) of Pub. L. 109-135 subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16, §901, in the same manner as the provisions of such Act to which

such amendment relates, see section 402(i)(3)(H) of Pub. L. 109-135, set out as a note under section 23 of this title.

Amendments by Pub. L. 109-135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109-58, to which they relate, except that amendment by section 402(i)(3)(E) of Pub. L. 109-135 is applicable to taxable years beginning after Dec. 31, 2005, see section 402(m) of Pub. L. 109-135, set out as a note under section 23 of this title.

#### EFFECTIVE DATE

Section applicable to property placed in service after Dec. 31, 2005, in taxable years ending after such date, see section 1335(c) of Pub. L. 109-58, set out as an Effective and Termination Dates of 2005 Amendments note under section 23 of this title.

### § 26. Limitation based on tax liability; definition of tax liability

#### (a) Limitation based on amount of tax

##### (1) In general

The aggregate amount of credits allowed by this subpart (other than sections 23, 24, and 25B) for the taxable year shall not exceed the excess (if any) of—

(A) the taxpayer's regular tax liability for the taxable year, over

(B) the tentative minimum tax for the taxable year (determined without regard to the alternative minimum tax foreign tax credit).

For purposes of subparagraph (B), the taxpayer's tentative minimum tax for any taxable year beginning during 1999 shall be treated as being zero.

##### (2) Special rule for taxable years 2000 through 2007

For purposes of any taxable year beginning during 2000, 2001, 2002, 2003, 2004, 2005, 2006, or 2007, the aggregate amount of credits allowed by this subpart for the taxable year shall not exceed the sum of—

(A) the taxpayer's regular tax liability for the taxable year reduced by the foreign tax credit allowable under section 27(a), and

(B) the tax imposed by section 55(a) for the taxable year.

#### (b) Regular tax liability

For purposes of this part—

##### (1) In general

The term “regular tax liability” means the tax imposed by this chapter for the taxable year.

##### (2) Exception for certain taxes

For purposes of paragraph (1), any tax imposed by any of the following provisions shall not be treated as tax imposed by this chapter:

(A) section 55 (relating to minimum tax),

(B) section 59A (relating to environmental tax),

(C) subsection (m)(5)(B), (q), (t), or (v) of section 72 (relating to additional taxes on certain distributions),

(D) section 143(m) (relating to recapture of proration of Federal subsidy from use of mortgage bonds and mortgage credit certificates),

(E) section 530(d)(4) (relating to additional tax on certain distributions from Coverdell education savings accounts),

(F) section 531 (relating to accumulated earnings tax),

(G) section 541 (relating to personal holding company tax),

(H) section 1351(d)(1) (relating to recoveries of foreign expropriation losses),

(I) section 1374 (relating to tax on certain built-in gains of S corporations),

(J) section 1375 (relating to tax imposed when passive investment income of corporation having subchapter C earnings and profits exceeds 25 percent of gross receipts),

(K) subparagraph (A) of section 7518(g)(6) (relating to nonqualified withdrawals from capital construction funds taxed at highest marginal rate),

(L) sections 871(a) and 881 (relating to certain income of nonresident aliens and foreign corporations),

(M) section 860E(e) (relating to taxes with respect to certain residual interests),

(N) section 884 (relating to branch profits tax),

(O) sections 453(l)(3) and 453A(c) (relating to interest on certain deferred tax liabilities),

(P) section 860K<sup>1</sup> (relating to treatment of transfers of high-yield interests to disqualified holders),

(Q) section 220(f)(4) (relating to additional tax on Archer MSA distributions not used for qualified medical expenses),

(R) section 138(c)(2) (relating to penalty for distributions from Medicare Advantage MSA not used for qualified medical expenses if minimum balance not maintained),

(S) sections 106(e)(3)(A)(ii), 223(b)(8)(B)(i)(II), and 408(d)(9)(D)(i)(II) (relating to certain failures to maintain high deductible health plan coverage),

(T) section 170(o)(3)(B) (relating to recapture of certain deductions for fractional gifts),

(U) section 223(f)(4) (relating to additional tax on health savings account distributions not used for qualified medical expenses), and

(V) subsections (a)(1)(B)(i) and (b)(4)(A) of section 409A (relating to interest and additional tax with respect to certain deferred compensation).

#### (c) Tentative minimum tax

For purposes of this part, the term “tentative minimum tax” means the amount determined under section 55(b)(1).

(Added § 25, renumbered § 26, Pub. L. 98-369, div. A, title IV, § 472, title VI, § 612(a), July 18, 1984, 98 Stat. 827, 905; amended Pub. L. 99-499, title V, § 516(b)(1)(A), Oct. 17, 1986, 100 Stat. 1770; Pub. L. 99-514, title II, § 261(c), title VI, § 632(c)(1), title VII, § 701(c)(1), Oct. 22, 1986, 100 Stat. 2214, 2277, 2340; Pub. L. 100-647, title I, §§ 1006(t)(16)(C), 1007(g)(1), 1011A(c)(10), 1012(q)(8), title IV, § 4005(g)(4), title V, § 5012(b)(2), Nov. 10, 1988, 102 Stat. 3425, 3434, 3476, 3524, 3650, 3662; Pub. L. 101-239, title VII, §§ 7811(c)(1), (2), 7821(a)(4)(A), Dec. 19, 1989, 103 Stat. 2406, 2407, 2424; Pub. L. 104-188, title I, § 1621(b)(1), Aug. 20, 1996, 110 Stat. 1866; Pub. L. 105-34, title II, § 213(e)(1), title XVI,

<sup>1</sup> See References in Text note below.